

O. Local Boards / 51

1951

File No.

Legal Department



P. 75 E

A BRANCH

Subject:— Opinions under the Bombay
Local Boards Act 1923

O. LOCAL BOARDS / 51

File No.

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Office of the R.L.A.

Bombay Local
Boards Act, 1923 -
section 131A.

Since the limits of the two districts have been altered during the term of office of the two District Local Boards, the provisions of sub-section (1) of section 131A have been attracted, and it may be necessary to dissolve both the boards and reconstitute them as required by that section. The modification of the Orders as proposed in para 7 of the Local Self Government and Public Health Department note would not be legally feasible as the two members from Ramnurg are entitled to be on the District Local Board, Bijapur until the expiry of the term of their office and no additional members can be appointed on the District Local Board, Belgaum during the period for which it is constituted; and consequently section 21 of the Bombay General clauses Act would not be available. The requisite draft Orders are sent herewith.

Id/- 10/1.

Remembrancer of Legal Affairs.

U.R. to L.S.G. & P.H.D. No.623, dated the
11th January 1951.

S.I./27.8.

Local Self Government and
Public Health Department,
Bombay Castle, January 1951.

ORDER.

No. .- Whereas the District of Belgaum has been reconstituted under Government Notification, Revenue Department, No.6342/49, dated the 7th October 1950 and on account of such reconstitution the limits of the said District are during the term of office of the members of the District Local Board, Belgaum, altered;

Now, therefore, in exercise of the powers conferred by section 131A of the Bombay Local Boards Act, 1923 (Bom.VI of 1923), The Government of Bombay is pleased to dissolve the said District Local Board, Belgaum, with effect from 1951 and to direct that a district local board shall be reconstituted for the District of Belgaum as reconstituted under the said notification.

To be filled
in by L.S.G.&
P.H.D.

The Government of Bombay is further pleased to direct that the District Local Board, Belgaum, as reconstituted shall consist of Members specified in the Schedule hereto annexed and who have been nominated by the Government. The said members shall hold office for a period of commencing from the said date.

SCHEDULE.

(Here specify the names of members)

By order of the Government of Bombay

Secretary to Government.

S.I./27.8.

O R D E R.

Bombay Local Boards
Act, 1923.

No. .- Whereas the District of
Bijapur has been reconstituted under Government
Notification, Revenue Department No.6342/49,
dated the 7th October 1950 and on account of such
reconstitution the limits of the said District
are during the term of office of the members of
the District Local Board, Bijapur, altered;

Now, therefore, in exercise of the powers
conferred by section 131A of the Bombay Local
Boards Act, 1923 (Bom.VI of 1923), the Government
of Bombay is pleased to dissolve the said District
Local Board, Bijapur, with effect from.....f.....
1951 and to direct that a district local board
shall be reconstituted for the District of Bijapur
as reconstituted under the said notification.

To be filled in by
L.S.G. & P.H.D.

The Government of Bombay is further pleased
to direct that the District Local Board, Bijapur
as reconstituted shall consist of members specified
in the Schedule hereto annexed and who have been
nominated by the Government. The said members
shall hold office for a period of f.....
commencing from the said date.

SCHEDULE.

(Here specify the names of members)

By Order of the Governor of
Bombay,

Secretary to Government.

Legal Department.

Bom. Local Boards
Act, 1923.
Sect. 50(1)
- - -

Free supply of
Books and lodging
and boarding to
poor students.
- - - - -

The question for consideration is whether under sub-section (1) of section 50 of the Bombay Local Boards Act, 1923 it would be competent for a District Local Board to contribute to the funds of an Institution whose activities are partly social and partly educational, viz. free supply of books and apparatus to the poor students, or free lodging and boarding to poor and destitute students.

In Re Christs' Hospital (1889) 15, App.Cas. 172, their Lordships of the Privy Council held that funds are applied for the purposes of education at school within the meaning of section 5 of English Endowed Schools Act, 1869 whether the system followed be that of teaching only, or that of taking in scholars and maintaining as well as teaching them. Education is in general interest of the community and generally speaking the supply of books and apparatus or free lodging and boarding to poor and destitute students can be considered as part of the educational scheme for advancement of learning. (Cf. R.L.A's opinion No.7051 dated 25-8-1949). In this view even the activities of the institutions such as the free supply of books and apparatus to poor students and free lodging and boarding to poor and destitute students can be considered as educational within the meaning of section 50(1) of the Bombay Local Boards Act, 1923, and it would be open ~~to~~ to a local board to make grants to such institutions provided its funds permit.

16/- 8/2.

Additional Secretary to Government.
H.R. to L.S.G. & P.H.D. No.2522, dated the 9th
February 1951.

Legal Department.

The District Local Board, West Khandesh, passed a resolution on 28th September 1950 to the effect that the chief Officer, Shri B.S. Patil, who was on probation for a period of one year, should not be confirmed and his services should be dispensed with with effect from 1st October 1950, after giving a month's salary (probably in lieu of notice). On the representation of Shri Patil, Government in their letter dated 20th December 1950 issued instructions that the execution of the resolution should be suspended. The Collector of West Khandesh, accordingly by his order dated 10th January 1951 suspended the resolution under section 125 of the Bombay Local Boards Act, 1923, on the ground that the resolution was unlawful and contravened the provisions of rule 4A made under section 133 (g) of the Act. This order of the Collector was confirmed the continued in force permanently by the Director of Local Authorities under sub-section (2) of section 125 (page 3 ante). The President of the District Local Board has now represented that as the resolution has been fully executed, there is nothing in existence the doing of which can be suspended by an order under section 125 of the Act. The question for the consideration of the R.L.A. is whether the contention of the President is valid.

2. Sub-section (1) of section 125 of the Bombay Local Boards Act, 1923, provides that if, in the opinion of the Collector the execution of any order or resolution of a local Board, or the doing of anything which is about to be done, or is being done by or on behalf of a local board, is causing, or is likely to cause, injury or annoyance to the public, or to lead to a breach of the peace or is unlawful, he may, by order in writing, under his signature, suspend the execution or prohibit the doing thereof. A perusal of this provision would show that under this section the Collector can suspend the execution or prohibit the doing of a thing which has not already taken place. The earlier words in the sub-section viz. "which is about to be done or is being done etc." also suggest this.

SI/27.8.

In this connection attention is invited to R.L.A.'s O.No. 11140, dated 26th December 1941 under parallel provision in section 174 of the Bombay District Municipal Act, 1901, wherein the R.L.A. has expressed the view where a resolution had already been executed that there was nothing subsisting, the execution of which could be suspended. Therefore the contention raised by the President of the District Local Board in his letter at page 7 ante is valid. If Shri Patil has any genuine grievance against the resolution of the District Local Board it would be open to him to pursue the matter in the Court of Law.

Id/-

Additional Secretary to Government.

U.R. to L.S.G. & P.H.D. No. 4195, dated the 19th March, 1951.

SI/27.8.

Legal Department.

Bombay Local
Boards Act, 1923,
Sec. 48.
Roads constructed
by the District
local Board -
Right to lease
sub-soil of -

Government Resolution, Revenue Department
No.8200/39, dated the 15th July 1948 lays down the
policy of Government in the matter of lands vesting
in the Municipalities under the Bombay District
Municipal Act, 1901, or the Bombay District Municipal
Boroughs Act, 1925; and would have no application to
the present case. If as stated by the Commissioner,
Northern Division (Page 47 ante) the Waghra Kervada
Road has been constructed by the District Local
Board, Broach, section 48 of the Bombay Local Boards
Act, 1923 would be attracted and the Board's right
to lease the sub-soil will have to be conceded. (see
R.L.A.'s opinion No.8203, dated the 26th August 1948)
The sanction to lease the sub-soil of the road will
have noe to be given by the state Government(see sec-
tion 3 of the Bombay Commissioners' (Abolition of
Offices) Act, 1950.

Id/- 27/2.

Additional Secretary to Government.

U.R. to L.S.G. & P.H.D. No.3649, dated the 2nd.

March 1951.

SI/27.8.

Legal Department.

Bombay Local
Boards Act, 1923,
Section 4(1);
Provision Dis-
qualifications of
members for continued
absence.

- - - - -

It appears that in exercise of powers conferred by section 4(1) of the Bombay Local Boards Act, 1923, Government directed that all the powers and duties which are exercisable by or on behalf of a Local Board under that Act or any other law for the time being in force, shall in the Satara (South) District be exercised and performed by persons specified in the Schedule I to Government Notification No.5928/33, dated the 8th December 1949. It is now reported by the Collector of Satara (South) that Shri Potdar one of the members absented himself for six consecutive months from the meetings of the Committee without any leave being obtained and, therefore, he is considered to be disqualified under section 30(1) of the Act. The L.S.G. & P.H.D. considers that Shri Potdar can be deemed to have incurred disqualification under section 30 and proposes not to fill up the vacancy. The question raised for the R.L.A's consideration is whether it is necessary to issue a notification under section 4(1) declaring him to have ceased to be a member.

2. The persons appointed under the proviso to section 4(1) of the Bombay Local Boards Act, 1923, are to exercise the powers and perform duties which are exercisable by or on behalf of a Local Board under the Act or any other law for the time being in force. These members would not, therefore, be considered as members of the Local Board since they have merely to exercise the powers and perform duties of such board. Consequently, section 30 which prescribes the disqualifications of members of local Board will have no application to the present case. Shri Potdar cannot, therefore, be considered to have been disqualified even though he absented himself for six consecutive months

from the meetings of the Committee without any leave being obtained. Had the Government notification appointing the District Local Committee stated that the members thereof shall be subject to all the liabilities, disabilities etc. under the Act as if they were members of the District Local Board, the position would have been different. If, however, Government desire to remove him on the ground that he does not take proper interest in the affairs of the Board, such removal will have to be notified (see section 16 of the Bombay General Clauses Act, 1904).

Id/-

Additional Secretary to Government.

U.R. to L.S.G. & P.H.D. No.257- Confl., dated the
9th March 1951.

SI/27.8.

R.I.No.19962/2-11-50.

Submitted.

2. It appears that on 10.2.1949 at 10 am. the roof of Dharamashala which was being built by the D.L.B., Ahmedabad, near Viramgaon station, collapsed while it was under construction, as a result of which seven "displaced" persons are reported to have died. One Karson Kanthad who was employed as a coolie in the construction of the building lost his wife and three children. It is alleged by Shri Karson that his deceased wife and two sons were also employed as coolies and has demanded compensation from the Board. The Board at first denied any liability on the grounds that the since at the time of the accident the construction was in progress and as such the Dharamashala was not open to the public, and the deceased persons not being employed in the construction work, were trespassers. However after reconsideration the Board on 10-8-50 resolved that; "Even though the Board has no legal liability, ~~for~~ from humanitarian point of view a sum of Rs. Rs.1000/- is sanctioned in favour of Karson Kanthad". On this the L.S.^u & P.H.D. considers that though the point of view is undoubtedly humanitarian it does not seem that under the existing provisions of the Bombay Local Boards Act, 1923 that such an expenditure can be incurred out of the funds of the D.L.B. the R.L.A. is requested to advise whether this view is correct.

SI./27.8.

Office of the R.L.A.

Bombay Local
Boards Act, 1923.
- - -
Section 44(2).

In view of the peculiar circumstances of this case section 44 (2) of the Bombay Local Boards Act, 1923 can be availed of ~~the~~ and the payment of Rs.1000/- to Shri Karsan Kanthad would be valid and no sanction of Government would be necessary. However before making the payment the District Local Board, Ahmedabad should pass a fresh resolution for payment of that amount as compensation for the damage sustained by Shri Karsan and not on the humanitarian ground as stated in the resolution now passed by it.

Id/- 2/1/51.

Remembrancer of Legal Affairs.

U.R. to H.H.D. No.110, dated the 3rd January 1951.

SI/27.8.

R.I.No.23862 dated 4-12-50.

Submitted.

2. The President of the D.L.B. Ratnagiri has suggested that the existing definition of the term "octroi" appearing in the clause (gg) of sec.3 of the Bombay Local Boards Act, 1923 may be amended as follows:

"Octroi" means a tax by way of cess on the entry of goods, into the area subject to the jurisdiction of the District Local Board under section 4(3) of the Act and the limits specified by the Provincial Government under section 106A of the Act, for consumption, use or sale therein."

It is urged in respect of the said amendment that it is necessary in view of the definition of the term "District" in clause (ff) of section 3 which includes even areas which are within the limits of a Municipality or Cantonment over which under sec.4(3) the Board has no jurisdiction and therefore there is likelihood of the definitions of "octroi" and "octroi limits" in sub-rules (11) and (12) respectively of the D.L.B.'s Octroi Rules being held ultra-vires. The L.S.G. & P.H.D. however considers that in view of the fact that the "district" for the purpose of the Act will be as defined in sec. 3A and as the jurisdiction of the D.L.B. established for such a "district" has been defined in sub-section (3) of sec.4 of the Act, and as Govt. has notified the creeks and arms of the sea as being within limits of the district under sec.106A of the Act, there seems to be no need to amend the existing definition of the term "octroi"; nor do the definitions of terms "octroi" and "octroi limits" mentioned in sub-rules (11) and (12) of Rule (2) of the Ratnagiri District Local Board Rules seem to conflict with the provisions of the Act. The R.L.A. is requested to advise.

SI/27.8.

Bombay Local Boards.
Act, 1923.
Section 3(gg).

Whether
requires
amendment.

Seen and returned.

The view taken by the Local Self Government
and Public Health Department is correct.

Id/- 14/2.

Additional Secretary to Government.

U.R. to L.S.G. & P.H.D. No.2857 dated the 15th
February 1951.

SI/27.8.

Legal Department.

By Government Order, H. & L.G.D. No.5928/33, dated the 17th December 1949, issued in exercise of the power conferred by section 131-A of the Bombay Local Boards Act, 1923, the Government of Bombay had dissolved the District Local Board, Thana, with effect from the 5th January 1950 and reconstituted another District Local Board. The new Board was to hold office for a period of two years i.e. upto 4th January 1952. In the meanwhile because of the enactment of the Bombay Municipal (Extension of limits) Act, 1905 (Bom.VII of 1950) under which the District Local Board, Bombay-Suburban-District, has been abolished (vide section 2 read with Schedule I) and all rights and obligations of that Board have been vested in the District Local Board of the Thana District (vide para 4(1) read with para 4(4) of Schedule FF to Bom.VII of 1950), Government propose to dissolve the reconstructed District Local Board of Thana with effect from 16th April 1951 and to reconstitute it again under section 131A of the Bombay Local Boards Act, 1923, in order to give representation to the residents of the villages of the Bombay Suburban District Now coming under the Jurisdiction of the District Local Board, Thana. The R.L.A. is requested to advise whether this would be legally feasible.

2. Sub-section (1) of section 131A of the Bombay Local Boards Act, 1923, empowers the State Government to Dissolve an existing local Board and to reconstitute one for a district when on account of (i) the constitution of a new district under the Bombay Land Revenue Code 1879, or (ii) under sub-section (2) of section 3A or (iii) for any other reason the limits ^{of} ~~as~~ the District are altered during the term of office of the members.

of the District Local Board. In the present case originally by Government Notification R.D. No.9823/33-III, dated the 24th September 1945, issued under section 7 of the Code 47 villages forming part of the South Salsette Taluka of the Bombay Suburban District were excluded therefrom and included in the Thana Taluka of the Thana District. The residents of these villages, however, urged Government that they ~~sew~~ should be placed under the jurisdiction of the District Local Board, Bombay Suburban District. That Local Board was, therefore, allowed to exercise jurisdiction over the said villages, by Government notifications dated the 15th July 1948. These notifications have since been cancelled. By another notification issued by the Revenue Department on 10th April 1950 under section 7 of the Land Revenue Code 14 villages from out of the 47 villages referred to above, have been transferred from the Thana District to the Bombay Suburban District. Thus the result of all these notifications is that under the Revenue Department notification of 1945 as amended by the R.D. notification of the 10th April 1950, the 33 villages referred to in this file continue to form part of the Thana Revenue District, and in view of the H.& L.G.D. notification dated the 15th April 1950, cancelling the jurisdiction of the District Local Board, Bombay Suburban District, over these villages they now form part of the Thana District for the purposes of the Local Board Administration. It can therefore be said that the Thana Revenue District has been reconstituted. The transfer of 14 villages from Thana Revenue District to Bombay Suburban Revenue District amounts to a reconstitution of that District. As the term of office of the members of the Thana District Local Board, constituted by Government....

Government order dated the 17th December 1949 is still running, there would be no objection to the proposal of Government to dissolve the existing Board and to re-constitute a new one under section 131A.

Id/-

Addl. Secretary to Government.

U.R. to L.S.G. & P.H.D. No.5622 dated the 9th April 1951.

SI/27,8.

Submitted.

2. The Director, Local Self. Government Institute Bombay has forwarded a draft scheme for the establishment of an All India Institute of Local Self Govt. and a Provisional constitution for the said Institute. The aims and objects of the Institute, as stated in the scheme are manifold, such as collection and study of all Acts, Rules, By-laws and Regulations relating to different systems of Local Self Govt. Prevailing in all States and Unions; publication of articles, books and other literature concerning Local Self Govt. subjects; publication of quarterly digest of Local Self. Govt. cases decided by different ^{Courts} throughout India; running of training classes for higher studies on Local Self Govt. subjects etc. The membership of the Institute consists of five categories, out of which class III represents statutory municipal corporations while class IV includes local authorities other than Statutory corporations. The subscription payable by a member belonging to category No. III is Rs. 250/- per annum while members belonging to class IV will have to pay Rs. 100/- per annum. Now a question has arisen as to whether in the State of Bombay there is any legal bar to the local bodies joining the proposed All India Institute. In his note at page 21 ante, the Secretary L.S.G. & P.H.D. has suggested that specific provision will have to be made in the Bombay District Municipal Act and the Bom. Municipal Boroughs Act enabling the Municipalities to make contribution, to the funds of the proposed institute. With regard to the contributions by Local Boards and Village Panchayats, it has been observed in L.S.G. & P.H.D. note at page 53 ante that the contribution by a Local Board will fall under section 50(L) read with section 77 of the Bombay Local Boards Act, 1923 while that of the latter would be covered by section 32 of the Bom. Village Panchayats Act, 1933. As regards contribution

by Bombay Municipal Corporation, it is stated that the proposal will be covered by section 118A of the City of Bombay Municipal Act, 1888 while in the case of Ahmedabad and Poona Corporation, the necessary authority to incur expenditure in this respect would be found in section 66(21) read with section 89 of the Bom. Prov. Municipal Corporation Act, 1949. The papers have been referred to this deptt. with a request to advise in the matter.

SI./27.8.

Legal Department.

Seen and returned.

The Legal position as stated by the Local
Self Government and Public Health Department is
Correct.

Id/-

Additional Secretary to Government.

U.R. to L.S.G. & P.H.D. No.7305, dated the 8th May
1951.

SI/27.8.

R.I.No.6154/29-3-51.

Submitted.

It appears that on the report of the president D.L.B. Karjat that Shri Raosaheb Amrutrao Deshmukh and Shri Babasaheb Raosaheb Patil, members of the D.L.B.; had absented from the meetings of the board for more than four consecutive months without the previous sanction of the Board the collector of Ahmednagar by his order dated 5th December, 1950 declared that the two vacancies had occurred due to the disqualification under section 30(1) (c) of the Bombay Local Boards Act, 1923 and fixed the various stages for the by-election. This case is the subject matter of the question proposed to be put by Shri P.K. Bhapkar M.L.A.

2. Please see the short notice question in this behalf proposed to be put by Shri Bhapkar and the draft answers to the various clauses thereof. The R.L.A. is requested to state whether the draft answers to clauses (3) and (8) are correct.

3. Clauses (3) and (8) of the question read as follows: (3) "Whether they (two members) were served with notices and their explanation taken by the President, D.L.B. before reporting for action against them by the Collector";

"(8) whether Govt. is aware that the law requires that a member should be heard before he is disqualified".

The question for consideration is whether any notice by the President D.L.B. to the member disqualified under section 30(1) (c) is necessary before his name is reported to the Collector and Whether he should be heard either before his name is reported to the Collector or the Collector Declares the disqualification.

The Local Boards Act provides whenever it is considered necessary by the Legislature, for an inquiry and for that purpose notice to the party concerned and his explanation thereto (see sections 13(2) and 31). But neither section 30(1) (c) nor section 32(1) require that any inquiry or notice nor any explanation to such notice is necessary. The answer to the questions would therefore be in the negative (See Kona Thiruma Reddy v. Secretary of State for India, Madras L.J.R. p.61 at p.67).

si/28.8.

Legal Department.

Seen and returned. The Legal position with regard to clauses (3) and (8) of the Assembly Question as stated at page 27 ante is correct.

Id/-

Additional Secretary to Government.

U.R. to L.S.G. & P.H.D. No.5275, dated the 2nd April
1951.

S.I./28.8.

Legal Department.

The Devasthan cess not being levied for purposes of the Bombay Local Boards Act, 1923, no such cess can be levied under section 59(b) of that Act. The Management of Devasthans not being one of the duties under section 60 cannot be undertaken by a district local board.

Id/-

Additional Secretary to Government.

U.R. to L.S.G. & P.H.D. No.8218, dated the 24th May
1951.

SI/28.3.

Office of the R.L.A.

Section 46(b) (ii) and section 176 of the Bombay District Municipal Act, 1901, are similar to section 119 sub-section (1) and section 121 of the Bombay Local Boards Act, 1923. In his opinion No.60 dated 16th September 1903 the Advocate general opined: "Section 46(b) (ii) of the Bombay District Municipal Act) must be read subject to section 176 and that any rules which if enforced would have the effect depriving the Commissioner of the power of requiring the Municipality to reduce its establishment or the pay of part of its establishment under section 176 would be ultra vires and void. No rules made under section 46 can be made so as to render them inconsistent with the Act. Thus all rules fixing establishments exist subject to the Power of the Commissioner to insist on reductions under section 176, but subject also to the right of appeal to Government under the proviso to that section". That opinion will apply to the construction of section 119 sub-section (1) and section 121 of the Bombay Local Boards Act, 1923. The former section will have to be read subject to the latter section. Even if the District Local Board has fixed the remuneration of its servant, it would be competent for the Director of Local Authorities, under section 121, to require the District local Board to reduce the salary of such servant, subject of course, to the right of appeal by the District Local Board to Government. Consequently, if in the present case the Director of Local Authorities considers that the scale of pay of the Village panchayat auditors or inspectors fixed by the District Local Board, Nasik, is excessive it would be quite competent for him to require

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the District Local Board to reduce that scale, and the fact that the present incumbent of the post has been confirmed in the scale prescribed by the District Local Board would not exclude the power of the Director of Local Authorities to require the District Local Board to reduce the pay scale of that post, subject of course to its right of appeal to Government.

Id/-

Remembrancer of Legal Affairs.

U.R. to L.S.G. & P.H.D., No.8922, dated the 6th June
1951.

SI/28.8.

Office of the R.L.A.

Levy of octroi by
D.L.B., Ratnagiri
within merged area
of Sawantwadi.

Bom. Local Boards
Act, 1923. Section
3-A.

States Merger
(Governors' Provin-
ces) Order, 1949.

It appears that the contention raised by the President of the District Local Board, Ratnagiri, has no force and the view expressed by the Commissioner, S.P. that the Sawantwadi State area did not form part of the District Local Board, Ratnagiri, until 1st August 1949, on which date the States Merger (Governors' Provinces) Order, 1949, came into force, is correct. That order was inter alia specifically issued to direct that the area of the Sawantwadi State shall be administered in all respects as if it formed part of the Bombay Province. By the agreement of merger full and exclusive authority, jurisdiction and powers for and in relation to the Governance of the Sawantwadi state were ceded to the Dominion Government which delegated its jurisdiction to the Government of Bombay. That extra-Provincial jurisdiction did not however authorize the administration of the merged areas as part of the Governors' Provinces. By section 290A of the Government of India Act, 1935, power was accordingly taken to achieve that purpose. In this connection attention is also invited to G.N., P. & S.D. No. 2755/46-F, dated 29th July 1949, reconstituting the districts in the Bombay Province with effect from 1st August 1949. According to that order the area of the sawantwadi state formed part of the district of Ratnagiri. Since this notification was issued after the coming into force of the States Merger (Governors' Provinces) Order, 1949, it was perfectly valid and the merged area in question could be considered to be falling within the jurisdiction of the District Local Board, Ratnagiri, with effect from 1st August 1949.

It is true that by Government Notification No.2325/46-I dated 28th July 1948, the Sawantwadi State was made a part of the revenue district of Ratnagiri. But that amalgamation was for the purpose of the revenue administration only and did not make the Sawantwadi State a district within the meaning of the Bombay Local Boards Act, 1923, so as to constitute the Ratnagiri Local Board a local board for that area. The view taken by the Director of Local authorities that the said notification was ultra vires is entirely wrong. In the circumstances there is no doubt that the recovery of octroi by the District Local Board, Ratnagiri, during the period from 1st March to 31st July 1949 was illegal.

Id/- 17/6.

Remembrancer of Legal Affairs.

U.R. to L.G.C. & P.H.D. No. ⁹⁷⁰⁷/dated the 20th June 1951.

SI/28.8.

OFFICE OF THE R.L.A.

The question raised for the R.L.A.'s consideration is whether security deposit of a contractor forfeited by a District Local Board in respect of a work financed by some other body, the District Local Board being only an executing agency, should be credited to the District Local Board accounts or whether it should go to the Financing authority.

2. As the contracting parties are the contractor and the District Local Board (and not the agency financing the work), the party which in law can forfeit the deposit amount is the District Local Board. However as the District Local Board is executing the work as agent of the financing authority and the loss, if any, incurred by reason of the default of the contractor would fall on the financing agency the real aggrieved party will be the financing authority and not the District Local Board. The benefit of forfeiture of deposit should therefore go to it and not the District Local Board. Apart from equity the financing authority in law can ask the District Local Board who is its agent to account for the forfeited deposit.

Sd/-

Remembrancer of Legal Affairs.

U.R. to L.S.G. & P.M.D. No. 9906, dated the 22nd June '51.

EVY. 22-8.

Legal Department.

It appears that the District Local Board, Kolhapur, in its meeting held on 31st January 1951 has resolved to pay a sum of Rs.1000/- as donation to the remand Home, Kolhapur. The question raised for the R.L.A.'s consideration is whether the District Local Board is competent to sanction the donation to the Remand Home which is located outside its jurisdiction, within the Kolhapur Municipal limits.

7 Under section 77 of the Bombay Local Boards Act, 1923, It is competent for a local board to incur expenditure, outside the area for any of the purposes of the Act, with the sanction of the Commissioner where the expenditure, exceeds Rs.200. Purposes of the Act are specified in section 50. A Remand Home is meant for the custody, protection, treatment and rehabilitation of children and youthful offenders. Grant to a Remand Home will be covered by clause (n) of section 50 which refers to measures likely to promote health, safety, comfort or convenience of the public. Consequently, it would be competent for the Kolhapur District Local Board to give, with the sanction of the Director of Local Authorities, a donation of 1000 rupees to the Remand Home located within the municipal limits of Kolhapur.

Id/-

Additional Secretary to Government.

U.R. to L.S.G. & P.H.D. No.10353, dated the 10th July, 1951.

SI/28.8.

Legal Department.

The view taken by the Assistant Examiner of Local Fund Accounts that the Independence Day Bonus would not fall under section 50(0) of the Bombay Local Boards Act, 1923, is correct, as by no stretch of imagination can such bonus be considered an expenditure ceremony, entertainment or exhibition. But the view taken in respect of any public reception, / But the view taken by him that the payment of the Independence Day Bonus is not permissible under section 119(1) is not correct. Attention is invited to the R.L.A.'s opinion No. 4148 dated the 16th April 1949, where a similar question under section 46(b)(ii) of the Bombay District Municipal Boroughs Act, was considered. As stated in that opinion there is little or no difference between an allowance and a bonus as both of them contemplate some extra-compensation for services or upon some other consideration. Section 119(1) of the Bombay Local Boards Act is similar to section 46(b)(ii) of the Bombay District Municipal Act. Consequently, that opinion of the R.L.A. will apply even in respect of payment of the Independence Day Bonus to servants of a District Local Board, and the payment thereof would be lawful provided the Schedule maintained by the Board provides for the payment of an occasional allowance in the form of a bonus. If not, the position may be regularized by the District Local Board, amending the Schedule.

Id./.....

Additional Secretary to Govt.

U.R. to L.S.G. & P.H.D. No. 10856 dated the 10th July 1951.

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Office of the R.L.A.

By the Bombay (Enlargement of Area and Alteration of Boundaries) Order, 1947, made by the Governor-General in exercise of the powers conferred by section 290 of the Government of India Act, 1935, the areas comprising of the Estates of Gad, Polajpur, Morwad, Koprupur, Mahisa, Porda and Dana which were included in the Vatrak Kantha Thana of the Baroda, Western India and Gujarath States Agency were made part of the Province of Bombay, the first three forming part of the district of Ahmedabad and the remaining that of Kaira. The areas added to the Ahmedabad District were, after the reconstitution of the districts, transferred to the Sabarkantha district. It appears that in these estates the holders of the lands were paying local fund to the matadars at a rate varying from 2 annas to 3 annas per bigha. In para 6 of their letter dated 14th June 1949 the R.D. issued instructions that this cess should be substituted by the rate current in the district i.e. 3 annas in a rupee of survey assessment as required by section 93 of the Bombay Local Boards Act, 1923. The collector of Kaira reports (p.145) that there have been practical difficulties in giving effect to this as no assessment has been fixed in respect of the lands. He, therefore, proposes that the present practice of charging local fund at the rate of 3 annas per bigha may be continued till the settlement is introduced. The Revenue Department is inclined to accept the proposal. However the L.S.G. & P.H.D. has raised the question whether it would be legally feasible to continue the practice. The R.L.A. is requested to advise.

2. Sub-para. (2) of paragraph 4 of the Bombay (Enlargement of Area and Alteration of Boundaries) Order, 1947, provides that all the enactments in force in the districts of Ahmedabad and Kaira and all notifications, Orders, Schemes, Rules, Forms and by-laws issued, made or prescribed under such enactments and in force in the said districts shall extend to and be in force in the areas

included in that district. Both the Bombay Land Revenue Code, 1879, and the Bombay Local Boards Act, 1923, are in force in the districts of Kaira and Sabarkantha. Under clauses (a) and (b) of sub-section (1) of section 93 of the Bombay Local Boards Act, 1923, the State Government is required to levy, on the conditions and in the manner thereafter described, a cess at the rate of three annas on every rupee of -

(a) every sum payable to the State Government as ordinary land revenue, except sums payable on account of any charges etc., and

(b) every sum which would have been assessable on any land as land revenue had there been no alienation of land revenue.

Since the laws in force in the Bombay State have been brought into force in the villages forming part of the merged Estates and since sec. 93 of the Bombay Local Boards Act, 1923, requires the local fund cess to be levied on the basis of sums payable as land revenue, it is clear that it would not be lawful to levy the local fund on the basis of acreage. The proposal made by the Collector of Kaira and endorsed by the Revenue Department viz. to continue the practice of levying the cess at 3 annas per bigha is not legally feasible.

3. The villages forming part of the merged Estates are not settled and no land revenue assessment has been fixed. The Collector of Kaira, therefore, experiences difficulty of charging the cess of 3 annas on every rupee of land revenue. But it appears that there are some lands in respect of which land revenue is paid while there are some which are free of land revenue. The former would fall under clause (a) while the latter under clause (b) of section 93(1). The cess in respect of the former should be assessed on the land revenue actually paid to Government and in respect of the latter on the basis of what would have been the land revenue if they had been similarly

SMR/28.8.
4 copies

treated and were not free of assessment. Early steps should, however, be taken to introduce survey settlement in those villages.

Id/-

Remembrancer of Legal Affairs.

U.R. to R.D. No.759 confl. dated the 1st August, 1951.

SI/28.8.

Legal Department.

The proviso to section 17 of the Bombay Local Boards Act, 1923, does appear to contemplate the fixing of different dates for different constituencies for the purpose of holding general election. There would therefore be no legal objection to the general election of a district local board being spread over a reasonable period of time.

Id/-

Additional Secretary to Government.

U.R. to L.S.O. & P.H.d. No.12001, dated the 27th July
1951.

S¹/28.8.

4.c.

Legal Department.

Rule 3 of the Rules framed by Government under section. 133(g) of the Bombay Local Boards Act, 1923, provides that no officer or servant of a board shall be removed from office, reduced, punished or dismissed without a reasonable opportunity being given to him of being heard in his defence, and the written defence tendered by such officer or servant shall be recorded. It appears that the District Local Board, Kaira complied with the provisions of this rule in that not only an opportunity was given to the Chief Officer to submit his explanation in writing, which he submitted on 31st March 1950, but that before the Special General Meeting of the Board was called to consider the question of chief Officer's dismissal, Shri Patel was given due intimation of the same on 9th April 1950 and was asked to remain present and to tender further explanation, if any, before the Board. But Shri Patel remained absent when the Board passed resolution No.77, dated 12th April 1950 about his dismissal from service. Rule 3 provides for giving reasonable opportunity and not for an opportunity as provided by the Fundamental ~~AND-NOT-FOR-AN-OPPORTUNITY-AS-PROVIDED-BY-THE-FUNDAMENTAL~~ and Supplementary Rules framed by the State Government. Consequently, the view expressed by the Resident Magistrate, Kaira, that Shri Patel was not given proper opportunity of explaining his case before proposed action was taken, does not appear to be correct. (videp.23 ante). In view of these facts, it does not appear necessary to give chief Officer any further opportunity of being heard in his defence.

2. For the reasons stated on its resolution No.77, dated 12th April 1950, the Board resolved that "the Board considers that Shri Patel should be dismissed and so Government's sanction should be obtained and after obtaining sanction he should be dismissed". Though the Board resolved to dismiss the Chief Officer after obtaining the sanction of Government, in his letter No.550, dated the 13th April 1950 addressed to the Commissioner, Northern Division the

(S.I/28.8. 4c) President stated, "In view of the conduct of the Chief

71.

Officer, I would request you to accord sanction for the suspension of the Chief Officer pending final decision." The Commissioner, Northern Division in his endorsement dated 20th April 1950 remarked.- The District Local Board can suspend the Chief Officer by votes of at least 2/3rds of the whole number of the members of the Local Board and with the previous sanction of the Commissioner..... As the District Local Board Kaira, has not passed a resolution for suspending the Chief officer, the Commissioner is not ~~able~~ able to take any action in the matter. The District Local Board has, however, passed a resolution by an overwhelming majority dismissing the Chief Officer. It would, therefore, be within the competence of Government to accord sanction to his dismissal etc."

In view of the above observations of the Commissioner, Government informed him in letter No.6646/33/18285, dated 3rd May 1950 that an prosecution was being launched against the Chief Officer, the result of the case should be awaited before sanctioning the dismissal of Mr. Patel, and that in the meanwhile the Board should be advised to pass another resolution for suspension of Shri Patel with the Commissioner's sanction under rule 4A(2). A copy of this letter was addressed to the President, who informed Government that Part II of the resolution about prosecution of Chief Officer was quite independent of the first part and that the resolution regarding dismissal was not at all conditional on the result of the prosecution which was to be lodged; but on the contrary the Board decided that he should be dismissed at once. On receipt of this letter, Government accorded its sanction to the dismissal of the Chief Officer in its letter dated 24th May 1950. Under rule 4A(1) no chief Officer can be removed from office or dismissed save by the votes of at least 2/3rds of the whole number of members of the local board and with the previous sanction of Government the Words "previous sanction of Government" contemplate that sanction should precede the passing of the resolution by the Board (see Emperor v. Shirinbai 42 B.L.R. 1060). Even under terms of the resolution itself, the Chief Officer was to be dismissed after obtaining sanction of Government for

dismissal of the Chief Officer. Consequently, after obtaining the sanction of Government, the Board should have passed another suitable resolution dismissing Shri Patel. As no fresh resolution was passed by the Board after obtaining Government sanction, the dismissal of the Chief Officer would be held illegal.

As regards the letter according Government sanction to the dismissal of Shri Patel, it may be pointed out that though the original order of Government is signed by the Under Secretary, L.S.G. & P.H.D. as required by rule 12 of the Rules of Business, it is not stated as being made "by order of the Governor". Consequently to obviate all doubt and to rectify the defeat, if any, Government may pass a fresh order according its sanction to the dismissal of Shri Patel, and after obtaining such sanction, the District Local Board should pass another resolution dismissing him and then take steps to prosecute him. During the interval, his dismissal would not be deemed to be lawful.

Id/-

Additional Secretary to Government.

U.R. to L.S.G. & P.H.D. No.740-Confl., dated the 27th July
1951.

SI/28.8.

4c.

Legal Department.

The question for R.L.A's consideration is whether the District Local Board, Ratnagiri, is competent to sanction a donation or grant of Rs.2,000/- to the R.P.Gogate College, Ratnagiri.

2. Under section 77 of the Bombay Local Boards Act, 1923, it is competent for a local board to incur expenditure outside the area subject to its authority for any of the purposes of the Act, with the sanction of the Director of Local Authority where the expenditure exceeds Rs.200/- Section 50 specified the various obligatory and discretionary duties in respect of which a local board is required to make adequate provision within the area subject to this authority so far as the local fund at its disposal will allow. Under clause (d) it is an obligatory duty of the District Local Board to make provision for primary education in the district and its expansion. Clause (1), however, leaves it to the discretion of the D.L.B. to provide out of the fund for educational objects other than those set forth in clause (d). Grant of Rs.2000/- to the Gogate College which is outside D.L.B. limits will, therefore, appear to be covered by clause (1) of section 50 read with section 77. However it is necessary that (a) D.L.B's financial position should permit of such a donation and (b) D.L.A's sanction is obtained. (Cf. R.L.A's opinion No.10858 dated 10-7-1951).

3. The D.L.A. in this case has refused his sanction under section 77, such a refusal is within his competence. The D.L.A's decision is also consistent with the note of C.S. dated 2-7-51 laying down the settled policy of Government in regard to donations by local bodies to institutions outside their jurisdiction and as a result of which the

Proposal of the D.L.B., Kanara, for a grant to the Kunta college was refused. The secretary of the Society running the Ratnagiri College has now moved Government to revoke the decision of the D.L.A. and permit the D.L.B. to pay the Grant. The question therefore is whether under section 132 the Government can revise the order of the D.L.A. The advocate General in his opinion No.4 dated 22/3/1949 has opined that section 132 of the Bombay Local Boards Act, 1923, cannot be construed as being equivalent to an express provision giving a right of appeal or a power of revision. The Government, therefore, cannot set aside the order of revise the order of the D.L.A. refusing to sanction the proposed grant under section 77. If, however, the Government feel that the grant should be sanctioned to the College, the Government may only write to the D.L.A. to reconsider his decision in the light of any observations they wish to make on the question.

Id/-

Additional Secretary to Government.

U.R. to L.S.G. & P.H.D. No.12674, dated the 7th August,
1951.

SI/30.8.
4c.

Legal Department.

Bombay Local
Board Election
Rules, 1932.

Rules 9 and 17.

Election deposit.

It appears that Shri Gangolli was a candidate for the District Local Board, Kanara elections held on 28th March 1949 from four Constituencies namely, Honavar, Haldipur, Sirsi and Siddapur. He withdrew his candidature for Sirsi and Siddapur constituencies in time. With regard to Honavar constituency, it appears that the last date for withdrawal of candidature was 24th March 1949 and that, on that day at 5.30 p.m., Mr. Gangolli's authorised agent presented his withdrawal application before the Election Karkun as the Mamlatdar who was the Returning Officer was not at Honavar but was camping at Manki, a place seven miles away from Honavar. Since the application was not presented to the Returning Officer (Mamlatdar) in person, he did not accept the application and proceeded with the elections. Shri Gangolli failed to secure the minimum number of votes and consequently, the Mamlatdar forfeited his deposit. Shri Gangolli appealed to the Collector against the Mamlatdar's Order without any success. He had also appealed to Government but his application was rejected. He has now renewed his application to Government praying for the return of his deposit. The Director of Local Authorities considers that the Returning Officer should not be allowed to suffer on the ground that he could not deliver the withdrawal application to the Returning Officer. R.L.A. is requested to advise.

2. Under Rule 9(1) of the Bombay Local Boards Election Rules, 1932, the nomination papers are required to be presented to the returning Officer either by the candidates accompanied by their proposers and seconders or by their proposers and seconders together. Having regard to the language of sub-rule (4) this provision obviously contemplate the presentation of nomination papers to the returning Officer in person. Rule 17(1) provides that at any time and at least three days before the date fixed for an election

a candidate may withdraw his candidature by notice in writing subscribed by him and delivered to the Returning Officer either by the candidate or by a person authorised by him in writing in that behalf." Delivery to the Returning Officer of the withdrawal of candidature under this provision also contemplates delivery in person. It is true that the Returning Officer was not present at the head-quarters on 24th March 1949, the last date on which the candidature could be withdrawn; but the Mamlatdar, who was the Returning Officer, was a touring Officer, which was known to all persons in the Taluka. Manki is at a distance of 7 miles from Honavar and if the candidate was serious about withdrawing his candidature he could have managed to go to Manki and presented his withdrawal application in person to the Returning Officer. Even assuming that the Returning Officer was not right in rejecting the withdrawal application it was open to the candidate to immediately approach the Collector for an authoritative interpretation of Rule 17. (see Rule 47 which provides that "if any question arises as to the interpretation of these rules, the question shall be referred for decision to the Collector and his decision shall be final".). The candidate did not choose to approach the Collector and allowed the elections to be held. If at this stage the order of forfeiture passed by the Returning Officer is cancelled on the ground that the withdrawal of candidature was valid it is likely that the interest of the other successful ~~the withdrawal of candidature was valid~~ candidate or candidates may suffer; for those who have failed at the election may contend that if Shri Gangolli's application for withdrawal had been recorded in their favour which would have changed the result of the elections. At any rate, Shri Gangolli's grievance is not against the forfeiture of his deposit on the ground that he failed to secure the minimum number of votes required. His grievance is that the withdrawal application should have been accepted by the Returning Officer. If he had to dispute the Returning Officer's order he should have immediately appealed to or approached the Collector for

relief, which, he did not do. Consequently, that stage passed and the elections were held. It would not, therefore, now be open to Shri Gangolli to say that his withdrawal application should ~~have~~ have been accepted by the Returning Officer to save the forfeiture of his deposit.

3. In these circumstances, it appears that it would not be advisable to re-open the matter and create further complications. Besides, Shri Gangolli's contention that the Returning Officer should have been present at the Headquarters on the 24th March 1949 and his application for withdrawal, though not presented in person, should have been accepted, does not appear to have much substance.

4. The L.S.G. & P.H. Deptt. might however consider the advisability of issuing instructions to the Collectors that when touring officers are appointed as Returning Officers, they should under rule 2(3) depute some subordinate with the previous sanction of the Collector to perform their duties in their absence from headquarters. That will obviate any inconvenience to the persons interested in the elections, if the Returning Officer happens to be absent from headquarters.

Id/-

Additional Secretary to Government.

U.R. to L.S.G. & P.H.D. No.11835, dated the 25th July '51.

SI/30.8. 4c.

L.D.
15912 - A - dt. 1-8-51

Attention is invited to letter from the Collr. of Ratnagiri No.A.D.M.-219, dated 23-7-1951 wherein he states that a meeting of the newly constituted District Local Board, Ratnagiri, was called by him under sec. 27A(1) of the Bombay Local Boards Act, 1923, for the election of the president and Vice-President, but it failed to elect the President and Vice-President. He, therefore, proposes that the D.L.B. May be superseded under sec. 129(1) of the Bombay Local Boards Act, 1923.

The L.S.G. & P.H.D., however, does not agree with the Collr. and holds that there is nothing in the Act to prevent the Collr. from calling another meeting under Sec.27A(1) for election of the President and Vice-President. R.L.A. is requested to advise whether the course proposed is legally feasible.

SI/30.8. 40.

Legal Department.

Seen and returned.

2. The Course suggested by L.S.G. & P.H.D. would be legally feasible (see R.L.A's opinion No.6219, dated 8-6-1949 where a similar point under analogous provision contained in section 19A of the Bombay Municipal Boroughs Act was considered).

Id/-

Additional Secretary to Government.

U.R. to L.S.G. & P.H.D. No.12425, dated the 3rd August,
1951.

S.I./30.8. 4c.

Legal Department.

The following two questions are now raised for R.L.A.'s considerations:-

- (1) Whether in case of default again for a second time in electing a President and Vice President, Government can supersede or dissolve District Local Board, Ratnagiri, under section 129(1) of the Bombay Local Boards Act, 1923; and
- (2) Whether in the absence of any specific rules providing for the election of the President and Vice President, the procedure of election of by show of hands would be appropriate.

2. Section 27A of the Bombay Local Boards Act, 1923, provides for the convening of a meeting presided over by the Collector, for the election of a new President and Vice President. The section does not prescribe the manner in which the election shall be held. Nor does it prescribe that the President or Vice President shall be elected by a majority of the total votes or by a majority of a particular strength, say for example, two thirds of the total votes. In the absence of any such ~~express~~ provisions, it follows that a President and a Vice President can, in case there are several candidates for these offices, be elected if they get higher number of votes than any of their rival candidates. In other words, the President and Vice President so elected need not have the support of a majority of the total members of the Board. The procedure for the conduct of the election which the Collector had followed at the last meeting was not correct. He appears to have treated the proposal for the election of one of the three candidates as a Resolution and the proposals for the election of the other two candidates as amendments of the Resolution and separately put the Resolution and each of the two amendments to vote. There being no majority of the whole house for either the main Resolution or either of the two amendments, he had declared the Resolution as well as the two amendments defeated. As has been pointed out above, it is not necessary for the persons to be elected as President and Vice

President to command a majority of the whole house. The simplest and the proper course for conducting the election will be as follows. If more than one candidate is proposed for any of the two offices of President and Vice President, the Collector should supply a voting paper or a slip of paper to each of the councillors on which they should be asked to indicate their choice of one of the several candidates proposed. Each councillor will have the right to select only one of the several candidates proposed. In other words he will have a single non-transferable vote. The Collector, after having collected the voting papers or slips, as the case may be, filled in by the councillors, should declare elected the candidate who is found to have secured the highest number of votes out of all the candidates. The Collector may be informed to follow the procedure outlined above at the next meeting which is to be called in this connection. If that procedure is followed, there is no question of the meeting which is to be called in this connection. If that procedure is followed, there is no question of the meeting proving infructuous. In view of this question No.1 raised by the L.S.G. & P.H.D. does not survive.

3. Now as regards question No.(2) the ordinary rule is that, if there is no special provision for recording votes, the votes can be taken by show of hands at the end of which, however, any voter has a right to demand poll (See on meetings pp.56-57). It may be pointed out that the procedure for conducting the election as explained in paragraph 2 can even be gone through by show of hands. But in that case the Collector will have to ensure that a member who has voted for one candidate by show of hands does not again vote for any of the other candidates. In other words he will have to see that each councillor exercises only one vote. However, in practice voting by means of voting paper or slips of paper would be found more convenient and advisable.

Id/- ...

Additional Secretary to Government.

U.R. to L.S.G. & P.H.D.NO.12977, dt. the 11th August 1961.

R.I.No.13656/30/6/51.

Govt. inquired from the Collr. of Sabar Kantha whether the Dhayats' position in the District is similar to that of the Inamdar in the Districts of the Bombay State and whether they do ~~not~~ or do not pay 'Judi' to Govt. and whether the lands held by them are assessed. In this letter dt. 24-4-50, the Collr. informed Govt. that during the State regime, certain lands were given out by the Rulers to their Dhayats as "Gharkhed" lands, and as no local fund cess was levied from them in the past, the same practice is continued even after the merger. He, however, suggests that in view of sect. 93(1)(b) of the Bombay Local Boards Act, 1923, which applies to the District, it would not be proper to exempt Dhayats from payment of local fund cess.

In his subsequent letter No. A/REV dated 3-7-1950, the Collor. of Sabar Kantha states that "gharkhed" land is a special type of land and it is not exactly similar to Inam land. The "gharkhed" land is not generally sold. Assessment is, however, fixed only in respect of those "gharkhed" lands which are situated in the surveyed villages, but in the case of those "gharkhed" lands which are situated in unsurveyed Khals and Jagiri Villages, no assessment is fixed. The Collr. suggests that in the case of the latter class of "gharkhed" lands, assessment fixed on homogenous tracts in the vicinity and Local Fund Cess can be levied on them.

The R.D. Office considers that

(1) As 'Gharkhed' lands in surveyed villages are assessed, they can be subjected to payment of local fund cess under sect. 1(1)(b) of the Bombay Local Boards Act, 1923, and

(2) in the case of the "Gharkhed" lands situated in the surveyed villages, for the purpose of local fund cess the lands can be assessed according to the procedure laid down in sec. 94(1) and the local fund cess can be recovered on the basis of the assessment so fixed.

R.L.A. is requested to advise.

Office of the R.L.A.

Government has not yet decided whether and to what extent alienations made in merged areas should be recognised. But until then there is no objection to recover local fund cess on Gharkhed lands given to Bhayats by former rulers on the principles laid down in section 94(c) of the Bombay Local Boards Act, 1923.

Sd/-

Remembrancer of Legal Affairs.

U.R. to R.D. Thro' L.S.G. & P.H.D. No. 12435, dated 3-3-1951.

EVY. 30/8.

Legal Department.

The Local Self Government and Public Health Department letter No.6645/33/609-C, dated the 24th May 1950, communicating Government sanction to the dismissal of the Chief Officer, Shri B.V.Patel, is addressed to the President, District Local Board, Kaira, and copies of the same are endorsed to the Commissioner, N.D., and the Collector of Kaira. When the original letter is addressed to the President, District Local Board, there can be no objection to furnish him with a copy of the said letter along with the endorsements.

Id/-

Additional Secretary to Government.

U.R. to L.S.G. & P.H.D. No.14562, dated the 12th September,
1951.

SI/30.8. 4c.

Legal Department.

Bombay Local
Boards Act,
1923,
Section 123(b) & (c)
and 133(h)

Concessions re-
garding leave and
medical aid to
District Local
Boards employees
Board-E suffering
from T.B.

It appears that the District Local Board, Kanara, has granted to Shri shanbhag one of its employees, concessions which are admissible to Government servants suffering or suspected to be suffering from Tuberculosis under Government Resolution, Health and Local Government Department, No.5305/33, dated the 30th September 1947, and desires that the following Rule framed by it under section 123 of the Bombay Local Boards act should be approved by Government:-

"8(e). As regards the concessions to be given to the Local Board servants suffering or suspected to be suffering from Tuberculosis, the concessions laid down in the rules accompanying the Government Resolution, Health and Local Government Department, No.5305/33, dated 30th September 1947, be adopted in respect of such servants of the District Local Board, Kanara, with however an amendment to rule No.1, that the servants concerned by the Civil Surgeon or the medical Board be paid by the District Local Board only"

Local Self Government and public Health Department considers that the rule regarding the grant of leave to the servants suffering from tuberculosis can be made under section 123 of the Bombay Local Boards Act, but the grant of concessions would not be covered by that section; and a rule for the purpose will have to be framed under section 133(h) of the Bombay Local Boards Act, 1922. The Accountant-General, considers that the concessions would be in the nature of allowances and as such rules for the purpose can be framed under section 123 clauses (b) and (c). R.L.A. is requested to advise.

2. The view taken by the Accountant-General appears to be correct. Clause (b) of section 123 provides for making regulations relating to the grant of leave to the permanent officers and servants maintained by the Board and under clause (c) regulations can be framed authorising the payment of allowances to the said officers and servants or to certain of them whilst absent on leave. The concessions granted under

Government Resolution, Health and Local Government Department, No.5305/33, dated the 30th September, 1947, relate to the payment of sanatorium charges, special diet charges, charges for special medicine etc.. All these concessions are in the nature of allowances to the employee during the period of leave granted to him for treatment of tuberculosis. Consequently, the regulation as proposed by the District Local Board can be framed under section 123(b) and (c). Under clause (mmi) of section 50 as inserted A by the Bombay Act XXXII of 1950, the District Local Board would be competent to provide for promoting the well-being of employees of the Local Board or class of such employees and of their dependants. The Payment of allowances would, therefore, also be covered by this provision. Section 133 gives power to Government to make rules or orders consistent with this Act and these rules will apply to all the Local Boards. Consequently, no rules under this provision can be framed in respect of grant of leave and concessions to servants of the District Local Board, Kanara, when such rules will have no general application.

Id/-

Additional Secretary to Government.

U.R. to L.S.G. & P.H.D. No.4491, dated 19th March 1951.

SI/30.8. 4c.

Office of the R.L.A.

Under section 119, sub-section (1) of the Bombay Local Boards Act, 1923, every district Local Board may appoint and pay such officers and servants as it shall deem necessary and proper to maintain for the efficient execution of its duties under this Act and under sections 94 to 97 of the Bombay Village panchayats Act, a district local board is empowered to control the panchayats in the district and for execution of that power is given certain power. To exercise control effectively over the Panchayats, district school boards are required to certain some staff. The question raised for the R.L.A.'s consideration is whether in view of section 119 of the Bombay Local Boards Act, it would be competent for a district Local Board to pay out of its funds the staff maintained for the exercise of control and supervision over the panchayats in the District.

2. Under section 4, sub-section (3) of the Bombay Local Boards Act, 1923, it is provided that "a district local board shall have authority for the purposes of this Act over the area for which it has been established, except such portion thereof as is for the time being within the limits of a municipal district or cantonment." It is clear for this provision that a district local board has authority for the purposes of the Bombay Local Boards Act, 1923 over the areas for which panchayats have been established in the district. It would, therefore, follow that the staff maintained for the control and supervision of panchayats in the district would be deemed to be the staff employed by the district local board within the meaning of section 119(1). The district local board will ~~there~~ therefore, be competent to incur expenditure out of its funds for the payment of the staff maintained for the supervision and control of the panchayats in the district.

- 14/-

Remembrancer of Legal Affairs.

Legal Department

The question for R.L.A.'s consideration is whether it is obligatory upon the Collector that the election programme should be fixed before the preliminary and final voters' list are published.

Section 11 of the Bombay Local Boards Act, 1923, provides for preparation of the preliminary list of voters, while section 12 provides for the publication thereof. Section 13 provides for revision of the list and section 14 provides for the final publication of the list of voters as revised under section 13. Section 17 provides that every election requisite for the purposes of this Act shall be held on such date as the Collector shall fix in this behalf. Rule 7 of the Bombay Local Board Election Rules, 1932, provides that at least eight weeks before the date fixed under section 17 for election, the Collector shall cause a written notice of the date so fixed under the dates, hours and places fixed for the various stages of election under rules 5 and 6 to be posted and published as provided therein. The various stages of election contemplated by rule 6 in respect of which the Collector is required to fix the date, hour and place are - (i) receipt of nomination papers (ii) scrutiny of nomination papers, (iii) recording of votes at the polling stations and (iv) counting of votes. It is therefore obvious that the date, hour and place in respect of such programme for the election can be fixed after the list of voters is finally published under section 14 of the Bombay Local Boards Act, 1923.

14/-

Additional Secretary to Government.

U.R. to L.S.G. & P.H.D. No. 15049, dated the 21st September, 1951.

Legal Department.

It appears that Government in P.W.D. by their G.R.No. 903 dated 4-5-1926 transferred to the D.L.B., East Khandesh, with effect from 1-6-1926, certain roads together with the works of improvements and special repairs in connection with the same and the necessary work-charged and temporary establishment". Dhulia-Amalner-Tapti Road was one of such roads. The G.R. makes no reference to the Amalner Inspection Bungalow situated on this road. But it appears from the Superintending Engineer's letter at p. 31 that this bungalow was also transferred to the D.L.B. along with the Dhulia-Amalner-Tapti Road. Assuming that to be correct, it does not appear that the roads referred to in the G.R. or the Amalner Inspection Bungalow were transferred to the D.L.B. subject to any conditions. Therefore, after the transfer, the roads as well as the Inspection Bungalow vested unconditionally in the D.L.B. and became their property by virtue of section 47 of the Bombay Local Boards Act, 1923. It appears that Government has now presumably with the consent of the D.L.B. provincialised the Dhulia-Amalner-Tapti Road and taken over the responsibility for maintenance of it. However, that by itself will not give the Government any legal right to take over the Amalner Inspection Bungalow or its management. It appears that the D.L.B. is not willing to hand over the bungalow or the management thereof to the P.W.D. The bungalow ~~xxxxxx~~ being the property of the D.L.B. since the transfer in 1926, the D.L.B. cannot be compelled to retransfer without its consent either the ownership of the bungalow to the P.W.D. or the responsibility for its maintenance.

Id/-

Additional Secretary to Government.

U.R. to P.W.D. No. 15800, dated the 5th October 1961.

N.V.D. 20/8 4cs.

The question for R.L.A.'s consideration is whether sanction of Government is necessary for extension of the period of service of Shri Dhopeshwarkar, a typist working under the District Local Board, Thana, upto 31-3-1952.

Section 119(1) of the Bombay Local Boards Act, 1923, provides that every district local board may appoint and pay such officers and servants as it shall deem necessary and proper to maintain for the efficient execution of its duties under this Act, and shall from time to time prepare and sanction a Schedule of the staff to be so maintained, setting forth the designations and grades of the different officers and servants to be maintained by it, their respective duties and the amount and nature of salaries, fees and allowances to be paid to each, and determining which of the said officers and servants are to be maintained permanently and which temporarily only. Under Sect. 78(a), the D.L.B. shall defray from the local fund the salaries and other emoluments of all officers and servants maintained under section 119 and the pensions or other retiring allowances etc., Under sect. 120, the D.L.B. may, subject to any rule or order made by the State Government under section 133(g) delegate to its President or Chief Officer, the power of appointing any officer or servant on a salary not exceeding such limit as may be prescribed by the Government by rule. Under sect. 122, the power of publishing or dismissing any officer or servant maintained by a D.L.B. shall, subject to any regulation framed under sect. 123 and to any rule under sect. 133(g), vest in the Board. The proviso thereto empowers the D.L.B. to delegate to the President or Chief Officer the power of publishing or dismissing any officer or servant receiving the salary not exceeding the limit fixed. Under sect. 123, every district local board may, from time to time, frame regulations in respect of matters specified in clauses (a) to (g). Under clause (e) it may frame regulations regulating the period of service of all

such officers and servants. From the letter of the President D.L.B.,Thana,dt.24-3-1952,it appears that instead of framing regulations the D.L.B. has adopted B.C.S.Rs.for purposes of leave,"4.etc.,of its employees. Though it

is not definitely stated that instead of framing regulations under sect.123(e),the D.L.B.Thana,has adopted the B.C.S.Rs. for regulating the period of service etc.,it appears that the D.L.B.,Thana,has adopted relevant provisions of the B.C.S.Rs for regulating the period of service of its officers and servants and this presumption appears to find support from the statement made by the Examiner,LeF.A.in his u.o.No.

W-3/7/151 dt.10-4-51,wherein he remarks:

"When the services of its employees are regulated by the B.C.S.Rs., the Board is competent to exercise the powers vested in Government or in any higher authority by these rules etc.,".

VMB
20/8
4 C

Legal Department.

The view taken by the Examiner Local Fund Accounts is correct and no sanction of the Government for grant of extension appears strictly necessary. It appears that as the pension of Shri Dopeshwarkar is payable by Government the District Local Board has thought it administratively advisable to seek the approval of Government.

Ed/-

Additional Secretary to Government

VHB U.R.to L.S.G. & T.H.D., No.16561, dated the 18th October 1951.
30/8
4 0

R.I.No. 21686 dt. 19-10-51.

Submitted.

2. It appears from the letter of the President, I.T.B.Ahmednagar dated the 28th July 1951 that the standing committee for the year 1951-52 consisting of seven members was appointed by the Board on 28-3-1951 for the period 1st April 1951 to 31st March 1952. In view of Sec.2 of Bom.Act No II of 1951 the Board has at its meeting held on 26-6-1951 resolved to appoint two more members to the standing Committee bringing the total to nine. The Act came into force on 30th March 1951 but the Committee Members assumed office on 1st April 1951. In these circumstances the President has requested Govt.to clarify whether the provisions of section 4 of that Act affects the appointment of the two additional members. The Director of Local Authorities considers that as the committee was appointed before the Act came into force its constitution is not affected by section 2 of the Act.The R.L.A.is requested to advise.

VHB
30/8
4 C

Legal Department.

Bom. Local Boards
Act, 1923.
Section 39(1).
Bom. Local Boards
(Amendment)
Act, 1951.
Section 4.

Section 39(1) of the Bombay Local Boards Act, 1923, provides that the term of office of members of a committee shall expire on the termination of one year from the date of appointment of the members or on such earlier date as the local board may direct. The date of appointment means the date from which the Committee commences its existence or takes office and not the date on which it is merely elected. The District Local Board, Ahmednagar, by its resolution dated 27/28th March 1951 appointed a Standing Committee for the year 1951-52 with effect from 1st April 1951 to 31st March 1952. The Standing Committee would be deemed to be appointed on 1st April 1951. Consequently section 4 of the Bombay Local Boards (Amendment) Act, 1951, which saves Committees appointed prior to the date of the coming into force of that Act, that is to say, prior to 30th March 1951, will have no application to the present case. The view taken by the Director of Local Authorities, C.D., in his letter dated 4th October 1951 at p.11 ante is not correct. No objection can, therefore, be taken to the addition of two more members on the Standing Committee of the Ahmednagar District Local Board.

Sd/- B.D. Mirchandani

Additional Secretary to Government

U.R. to L.S.G. & P.H.D. No.17083, dated the

26th October 1951.

18709
10-9-51

The Sarpanch, Village Panchayat, Umbraj, States that the D.L.B., Satara North District, has started a practice of selecting three village panchayats which have done good work in the year and of giving them rewards. He suggests that all the D.L.Bs. in the State should be advised to follow this practice and they should call a conference of Sarpanchas, Deputy Sarpanchas and Secretaries of village panchayats in their districts and give rewards at such conference. The L.S.G. and P.H. Department appears to have accepted these proposals and it proposes to issue a circular clarifying the following points:-

- (i) that Government will not give any financial assistance in this respect; and
- (ii) that no special conference should be called for giving of rewards but that rewards should be given at the time of yearly gathering held by the Special Officer for village panchayats in the District.

The Director of Local Authorities, C.D. who was consulted in the matter considers that as there is no provision in the Bombay L.B. Act for incurring expenditure for holding conferences and giving rewards to village panchayats, that Act will have to be suitably amended to meet such expenditure.

The Examiner, L.F.A. who was consulted in the matter

opines.....

opines that "in view of the provisions of section 95(1) of the Bombay Village Panchayats Act, 1933, authorising a D.L.B. to adopt measures for the encouragement and fostering the growth of village panchayats, the said expenditure i.e for holding of village conferences and distribution of prizes etc. during such functions would seem to be covered by section 50(0) of the Bombay L.B.Act."

R.L.A. is, however, requested to advise.

Id/- E.P. Bhargava
24/9

D.S. (Civil)

x

Id/- R.T.K.
1/10

S.A.S.

KAN/30-8. 5
4 c.

LEGAL DEPARTMENT.

Under section 95(1) of the Bombay Village Panchayats Act, 1933 (Bom. VI of 1933), the district local board may delegate to the President, Vice-President, Chief Officer, Public Health Officer or any other officer specially appointed by the district local board in this behalf the duties of encouraging the establishment and fostering the growth of panchayats and of assisting panchayats in the proper exercise of their powers and performance of their duties. This provision in the Village Panchayats Act implies that it is one of the duties of the district local board to encourage the establishment and foster the growth of panchayats, though there is no reference to such duty in the Bombay Local Boards Act, 1923. "When powers, privileges, or property are granted by a Statute, everything indispensable to their exercise or enjoyment is impliedly granted also as it would be in a grant between private persons." (See Maxwell, 8th Edition, p. 310). Consequently, the power vesting in the district local board under section 95(1) of the Bombay Village Panchayats Act, 1933, would include power to incur expenditure for encouraging the establishment and fostering the growth of panchayats in the district. Presumably the object of conferences, and distribution of prizes appears to be to encourage and foster the growth of panchayats. As such, the expenditure on them by the District Local Board would be permissible. If a Statute other than the Bombay Local Boards Act, 1923, confers certain powers or duties on the Local Boards, expenditure for the proper exercise of such powers or discharge of such duties can be legally incurred, though such expenditure may not have been expressly provided for under the Bombay Local Boards Act, 1923.

Id./.....

Additional Secretary to Government.

U.R. to L.S.G. & P.H.D. No. 16361, dated the 15th October 1951.

SER, 30-8-56

4 Copies.

20252/29/9/

pp. 349-351 of
Collector's file.

p. 349. Do.

pp. 353-357 Do.

It appears that the road at Kolshet vests in the District Local Board, Thana. By its resolution No. 29 dated 15-6-1949, the D.L.B., Thana, unanimously decided to lease a portion of the Kolshet Road, measuring 1300 ft. long and 20 ft. wide, to Shri Arjun Bala for a period of three years from 1-8-49 to 31-7-1952 for stocking and unloading sand on payment of an annual rent of Rs. 1200/- Under the proviso to sub-sec.(4) of section 61A of the Bombay Local Boards Act, 1923, the D.L.B. obtained sanction of the Commissioner, N.D. for leasing the said road land, and a lease was executed between the parties on 9-8-49.

It appears Khajen land adjoining the said road was divided into plots and was put to auction on annual lease from 1-4-1949 to 31-7-1950 and this auction realised a revenue of Rs.24000/-. The plots were again ordered to be put to auction on annual lease from 1-8-50 to 31-7-51 with an price of Rs. 312 and Rs. 283/- per guntha respectively. The auction could not be completed as the bidders raised objection on the ground that the only access to these plots had already been leased by the D.L.B. to Shri Arjun Bala. The D.L.B., Thana, is however, not inclined to cancel the lease. The Collector of Thana suggests that since the leasing of the road by the D.L.B. was the direct cause which has resulted in non-disposal of the said plots, and has affected Govt. revenue, the lease of the road may be cancelled by Govt.

vide p. 19 ante.

The U.S., L.S.G. & P.H.D. is of opinion that since an agreement has been executed the lease is not terminable except when there is a breach of the conditions laid down in it; it seems that no action can be taken and the lessee should be allowed the full period of the lease- upto 31-7-52. T.L.A. is requested to advise.

Office of the R.L.A.

The view taken by Under Secretary, Local Self Government and Public Health Department, is correct. Section 132 of the Bombay Local Boards Act, 1923 would not be available for cancelling the lease. The lease cannot be cancelled except for the breach of any of its terms and conditions.

o/c

34/-

27/4

Remembrancer of Legal Affairs.

U.R. to L.S.G. & P H. D.No. 19082, dated the
28th November, 1951.

C.G.R./30-8

Legal Department.

In his letter No. 844622, dated 25.10.1952, the Collector of Sholapur refers to rule 8 of the Bombay Local Boards (President and Vice-President) Election Rules, 1952, framed under clause (h) of section 133 of the Bombay Local Boards Act, 1924, and observes that the rule in question does not provide for a case where either at the first or subsequent ballot, two candidates obtain equal number of votes and which also happen to be the smallest number of votes in that particular ballot. He amplifies his view point by giving an illustration wherein three only candidates A, B & C obtain votes as under :-

A - 20

B - 15

C - 15

The Collector remarks that as A does not obtain more votes than the aggregate votes of B and C, the candidate who has obtained the smallest number of votes has to be excluded from the election and the balloting is to proceed according to rule 8; and the question is who is to be eliminated from the next ballot, B or C. The Collector considers that rule 8 will have to be suitably amended in order to provide for such cases. The Collector further states that rule 8 should also be amended to provide that in cases where two candidates left for the last balloting poll equal number of votes though balloting is repeated several times, the result shall be declared by casting lots. The papers are referred to the R.L.A. for his advice and for suggesting a solution.

2. It is true that rule 8 of the Bombay Local Boards (President and Vice-President) Election Rules, 1952, does not provide as to which of the candidates securing the equal smallest number of votes is to be eliminated at each ballot. Nor does rule 7 which relates to cases at which there are only two candidates as to who is to be elected in case of equality of votes. These Election Rules are, however, supplementary to the provisions of the Act. In this connection attention is invited to sub/section (4) of section

of section 27A of the Bombay Local Boards Act, 1924, which runs as follows:/

" If in the election of the president or the vice-president there is an equality of votes, the result of the election shall be decided by lot to be drawn in the presence of the Collector or the officer presiding in such manner as he may determine."

This provision, therefore, will cover cases where there is equality of votes between two candidates if there are two candidates or equality of votes at various ballots under rule 8 if there are more than two candidates. Therefore, no amendment of rules 7 and 8 is necessary. To make the position clear it will be desirable for the L.S.G. & P.H.D. to issue a circular to the D.L.Bs. and the Collectors on the above lines explaining position.

Additional Secretary to Government.

U.R. to L.S.G. & P.H.D. No. 18891, dated the 24th November 1952.

SSM / 30/8/56.

~~xxxxxxx~~
Office of the R.L.A.

At 'A' of Revenue Department Office note
at p. 239 it is stated:

"In case it is irrigation cess or
miscellaneous irrigation receipts, no local
fund cess will be leviable but if that is irr-
igation water rate under the Land Revenue
Code, the local fund cess can be levied."

R.L.A. is requested to advise whether the view
taken by Revenue Department is correct.

Under section 95 of the Bombay Local Boards
Act, 1923, the State Government may levy a cess not
exceeding three annas on every rupee of water rate
leviable under the provisions of the Bombay Irriga-
tion Act, 1879. The water rate leviable under
section 55 of the Bombay Land Revenue Code is
not water rate leviable under the Bombay Irrigation
Act and consequently no cess thereon can be levied
under section 95. In this connection attention is
invited to the language of section 55 of the L.R.
Code which makes it clear that water rate under
that section is levied for water in respect of
which no rate is leviable under the Bombay Irrigation
Act, 1879. Under section 93 local fund cess can be
levied on ordinary land revenue at a certain
specified rate. Water rate leviable under section
55 of the Bombay Land Revenue Code is not ordinary
land revenue (see R.L.A.'s opinion No. 1183 dated
2nd March 1931). No local fund cess can, therefore,
be levied under section 93 on water rate levied under
section 55 of the Bombay Land Revenue Code. The view
taken by Revenue Department is not, therefore,
correct.

OE. Sd/-

Remembrancer of Legal Affairs.

U.⁴ to R.D. No. 19383, dated the 3rd December 1951.
4 c. V.R.K. 30/8/56

26167
15/12/57

Attention is invited to the L.S.G. and P.H. B. Circular Memo (Confdl) No. 5928/43 dated 17-9-1951 ~~xxx~~ wherein the Collectors are requested to keep ready the programmes about the ensuing election of District Local Boards in the manner specified therein. The question for R.L.A's consideration is whether there is any legal objection to the publication of the voters' list before the constitution of the District Local Board is actually sanctioned by Government.

↑.R.K.
30/8/56

Office of the R.L.A.

The final publication of voters' list is quite independent of other stages in the election. There is no objection to publish the voters' list finally, although the preparation for other stages may not be completed.

O/O Sd/-

Remembrancer of Legal Affairs.

U.R. to L.S.G. & P.H.D. No. 20410, dated the 21st
December 1951.

4 c.
V.R.K.
30/8/56